No. 106.

Brf. of Meagher & Guthrie for P. E.

Office Supreme Court
FILED
NOV 17 1902
JAMES H. McKENNEY
Clerk

No. 106.

Filed Nov. 17, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK, *Plaintiffs in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS.	Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

JAMES F. MEAGHER,
WILLIAM D. GUTHRIE,
Of Counsel for plaintiffs in error.

18178.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK, *Plaintiffs in Error*, vs. THE PEOPLE OF THE STATE OF ILLINOIS.	Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

The question involved in this case raises the constitutionality, under the fourteenth amendment of the Constitution of the United States, of a portion of the Illinois Inheritance Tax Act. The question now presented to this court was not involved or decided in *Magoun* v. *Illinois Trust and Savings Bank*, 170 U. S., 283.

The statutory provisions in question are as follows (Starr and Curtis's Annotated Illinois Statutes, pp. 3528-3529):

§ 1. ALL PROPERTY, REAL, PERSONAL AND MIXED WHICH SHALL PASS BY WILL OR BY THE INTESTATE LAWS OF THIS STATE FROM ANY PERSON WHO MAY DIE SEIZED

OR POSSESSED OF THE SAME WHILE A RESIDENT OF THIS STATE OR, IF DECEDENT WAS NOT A RESIDENT OF THIS STATE AT THE TIME OF HIS DEATH, WHICH PROPERTY OR ANY PART THEREOF SHALL BE WITHIN THIS STATE OR ANY INTEREST THEREIN OR INCOME THEREFROM, WHICH SHALL BE TRANSFERRED BY DEED, GRANT, SALE OR GIFT MADE IN CONTEMPLATION OF THE DEATH OF THE GRANTOR OR BARGAINOR OR INTENDED TO TAKE EFFECT, IN POSSESSION OR ENJOYMENT AFTER SUCH DEATH, TO ANY PERSON OR PERSONS OR TO ANY BODY POLITIC OR CORPORATE IN TRUST OR OTHERWISE, OR BY REASON WHEREOF ANY PERSON OR BODY POLITIC OR CORPORATION SHALL BECOME BENEFICIALLY ENTITLED IN POSSESSION OR EXPECTATION TO ANY PROPERTY OR INCOME THEREOF, SHALL BE, AND IS, SUBJECT TO A TAX AT THE RATE HEREINAFTER SPECIFIED TO BE PAID TO THE TREASURER OF THE PROPER COUNTY FOR THE USE OF THE STATE, AND ALL HEIRS, LEGATEES AND DEVISEES, ADMINISTRATORS, EXECUTORS AND TRUSTEES SHALL BE LIABLE FOR ANY AND ALL SUCH TAXES UNTIL THE SAME SHALL HAVE BEEN PAID AS HEREINAFTER DIRECTED. WHEN THE BENEFICIAL INTERESTS TO ANY PROPERTY OR INCOME THEREFROM SHALL PASS TO OR FOR THE USE OF ANY FATHER, MOTHER, HUSBAND, WIFE, CHILD, BROTHER, SISTER, WIFE OR WIDOW OF THE SON OR THE HUSBAND OF THE DAUGHTER, OR ANY CHILD OR CHILDREN ADOPTED AS SUCH IN CONFORMITY WITH THE LAWS OF THE STATE OF ILLINOIS, OR TO ANY PERSON TO WHOM THE DECEASED, FOR NOT LESS THAN TEN YEARS PRIOR TO DEATH, STOOD IN THE ACKNOWLEDGED RELATION OF A PARENT, OR TO ANY LINEAL DESCENDANT BORN IN LAWFUL WEDLOCK, IN EVERY SUCH CASE THE RATE OF TAX SHALL BE ONE DOLLAR ON EVERY HUNDRED DOLLARS OF THE CLEAR MARKET VALUE OF SUCH PROPERTY RECEIVED BY EACH PERSON AND AT AND AFTER THE SAME RATE FOR EVERY LESS AMOUNT, PROVIDED THAT ANY ESTATE WHICH MAY BE VALUED AT A LESS SUM THAN TWENTY THOUSAND DOLLARS SHALL NOT BE SUBJECT TO ANY SUCH DUTY OR TAXES, AND THE TAX IS TO BE LEVIED IN ABOVE CASES ONLY UPON THE EXCESS OF TWENTY THOUSAND DOLLARS RECEIVED BY EACH PERSON.

WHEN THE BENEFICIAL INTERESTS TO ANY PROPERTY OR INCOME THEREFROM SHALL PASS TO OR FOR THE USE OF ANY UNCLE, AUNT, NIECE, NEPHEW OR ANY LINEAL DESCENDANT OF THE SAME, IN EVERY SUCH CASE THE RATE OF SUCH TAX SHALL BE TWO DOLLARS ON EVERY ONE HUNDRED DOLLARS OF THE CLEAR MARKET VALUE OF SUCH PROPERTY RECEIVED BY EACH PERSON ON THE EXCESS OF TWO THOUSAND DOLLARS SO RECEIVED BY EACH PERSON. IN ALL OTHER CASES THE RATE SHALL BE AS FOLLOWS: ON EACH AND EVERY HUNDRED DOLLARS OF THE CLEAR MARKET VALUE OF ALL PROPERTY AND AT THE SAME RATE FOR ANY LESS AMOUNT; ON ALL ESTATES OF TEN THOUSAND DOLLARS AND LESS, THREE DOLLARS; ON ALL ESTATES OF OVER TEN THOUSAND DOLLARS AND NOT EXCEEDING TWENTY THOUSAND DOLLARS, FOUR DOLLARS; ON ALL ESTATES OVER TWENTY THOUSAND DOLLARS AND NOT EXCEEDING FIFTY THOUSAND DOLLARS, FIVE DOLLARS, AND ON ALL ESTATES OVER FIFTY THOUSAND DOLLARS, SIX DOLLARS: PROVIDED, THAT AN ESTATE IN THE ABOVE CASE WHICH MAY BE VALUED AT A LESS SUM THAN FIVE HUNDRED DOLLARS SHALL NOT BE SUBJECT TO ANY DUTY OR TAX.

§ 2. WHEN ANY PERSON SHALL BEQUEATH OR DEVISE ANY PROPERTY OR INTEREST THEREIN OR INCOME THEREFROM TO MOTHER, FATHER, HUSBAND, WIFE, BROTHER AND SISTER, THE WIDOW OF THE SON, OR A LINEAL DESCENDANT DURING THE LIFE OR FOR A TERM OF YEARS OR(AND)REMAINDER TO THE COLLATERAL HEIR OF THE DECEDENT, OR TO THE STRANGER IN BLOOD OR TO THE BODY POLITIC OR CORPORATE AT THEIR DECEASE, OR ON THE EXPIRATION OF SUCH TERM, THE SAID LIFE ESTATE OR ESTATES FOR A TERM OF YEARS SHALL NOT BE SUBJECT TO ANY TAX AND THE PROPERTY SO PASSING SHALL BE APPRAISED IMMEDIATELY AFTER THE DEATH AT WHAT WAS THE FAIR MARKET VALUE THEREOF AT THE TIME OF THE DEATH OF THE DECEDENT IN THE MANNER HEREINAFTER PROVIDED, AND AFTER DEDUCTING THEREFROM THE VALUE OF SAID LIFE ESTATE, OR TERM OF YEARS, THE TAX TRANSCRIBED BY THIS ACT ON THE REMAINDER SHALL BE IMMEDIATELY DUE AND

PAYABLE TO THE TREASURER OF THE PROPER COUNTY, AND, TOGETHER WITH THE INTERESTS THEREON, SHALL BE AND REMAIN A LIEN ON SAID PROPERTY UNTIL THE SAME IS PAID: PROVIDED, THAT THE PERSON OR PERSONS OR BODY POLITIC OR CORPORATE BENEFICIALLY INTERESTED IN THE PROPERTY CHARGEABLE WITH SAID TAX ELECT NOT TO PAY THE SAME UNTIL THEY SHALL COME INTO THE ACTUAL POSSESSION OR ENJOYMENT OF SUCH PROPERTY, OR, IN THAT CASE SAID PERSON OR PERSONS OR BODY POLITIC OR CORPORATE SHALL GIVE A BOND TO THE PEOPLE OF THE STATE OF ILLINOIS IN THE PENALTY THREE TIMES THE AMOUNT OF THE TAX ARISING UPON SUCH ESTATE WITH SUCH SURETIES AS THE COUNTY JUDGE MAY APPROVE, CONDITIONED FOR THE PAYMENT OF THE SAID TAX, AND INTEREST THEREON, AT SUCH TIME OR PERIOD AS THEY OR THEIR REPRESENTATIVES MAY COME INTO THE ACTUAL POSSESSION OR ENJOYMENT OF SAID PROPERTY, WHICH BOND SHALL BE FILED IN THE OFFICE OF THE COUNTY CLERK OF THE PROPER COUNTY: PROVIDED, FURTHER, THAT SUCH PERSON SHALL MAKE A FULL, VERIFIED RETURN OF SAID PROPERTY TO SAID COUNTY JUDGE, AND FILE THE SAME IN HIS OFFICE WITHIN ONE YEAR FROM THE DEATH OF THE DECEDENT, AND WITHIN THAT PERIOD ENTER INTO SUCH SECURITIES AND RENEW THE SAME FOR FIVE YEARS."

As appears from the record, Albert M. Billings, for many years a resident of the City of Chicago, died in that city on February 7, 1897, leaving a last will and testament, dated October 6 , 1890, which was duly filed, proved and admitted to probate in the Probate Court of Cook County on February 15, 1897. Mr. Billings left him surviving a widow, Augusta S. Billings; a son, Cornelius K. G. Billings, who is one of the plaintiffs in error, born September 16, 1861, the issue of his marriage with said Augusta S. Billings; a grandson, Albert M. Billings Ruddock, who is the other plaintiff in error,

born January 13, 1886, son of Sarah A. Billings, daughter of the said Albert M. Billings and Augusta S. Billings, which daughter was deceased prior to the death of said Albert M. Billings, and Henry A. Billings, a son, born in the year 1837, his only heirs at law. The son, Cornelius K. G. Billings, intermarried with Blanche Elizabeth McLeish, and has had two children born to him, the issue of said marriage, Blanche Pauline Billings, born June 25, 1886, and Albert M. Billings, Jr., a son, born November 15, 1894; the widow and heirs above named are now living. (record, 14, 59.) No question arises on this record in respect of Henry A. Billings. (record, 59-61.)

By his last will and testament, Albert M. Billings devised and bequeathed to his "wife, Augusta S. Billings, for her use and benefit during her natural life (and at her death to be divided as hereinafter set forth), my entire estate, both real and personal, wherever located," excepting such reservations as were thereinafter set out and made, after which the will proceeded:

> "I do also herein give and bequeath to my son Cornelius Kingsley Garrison Billings, and to my grandson Albert M. Billings Ruddock, to be held and owned by them at the death of my wife Augusta S. Billings as is hereinafter explained and set forth, all the property and estate herein bequeathed to her my wife not otherwise disposed of by my said exeecutors hereinafter named, in the manner following to wit: Two-thirds thereof to my son C. K. G. Billings and one-third thereof to my grandson Albert M. Billings Ruddock to be held and owned by them as above stated during their lifetime, and should my son C. K. G. Billings die, not leaving a living child or children of his own issue, the property herein bequeathed to him shall revert and be held and owned by my grandchild Albert M. Billings Ruddock during his lifetime, and should

> my grandson Albert M. Billings Ruddock die not leaving a child or children of his own issue, then all the property and estate herein bequeathed to him shall revert and become the property and estate of my brother John D. Billings (should he be alive at that time) and my living nephews and nieces who shall be living at the time of the death of my said grandson, as aforesaid, said brother, nieces and nephews to share and share alike in said estate." (record, 60.)

There was thus created a life estate in the widow in the entire estate; and at her death, a life estate in the son, Cornelius K. G. Billings, in two-thirds, and in the grandson, Albert M. Billings Ruddock, in one-third, of all the property bequeathed to the wife, not otherwise disposed of by the executors.

The widow duly renounced in writing the provision made for her in said will, and elected to take, in lieu thereof, her dower and legal share of said estate, pursuant to the Illinois statute. (Chap. 41, par. 10, p. 1464, Starr and Curtis.) The widow having renounced, and having received her legal share of said estate, the life estates in the son and grandson in the residue were, severally, accelerated, and they became entitled at once to their several interests, without awaiting the death of the widow.

The county judge originally, and subsequently the County Court of Cook County, entered a judgment order assessing the tax to be paid by Cornelius K. G. Billings upon his life interest, at the sum of $24,821.18, and by the grandson, Albert M. Billings Ruddock, upon his life interest, at the sum of $14,043.94, and ordered that the tax upon nearly $1,100,000, part of the estate of said Albert M. Billings, should be postponed until certain estates of $846,584.70, and $250,976.95, severally, should be vested. These amounts represent the difference

after setting off to the widow her legal share, between the actual value of the residue and remainder of the estate of Albert M. Billings, and the value of the life estate of the son, Cornelius K. G. Billings, in two-thirds thereof, estimated to be $846,584.70, and the like difference in the case of the grandson, Albert M. Billings Ruddock, estimated to be $250,976.95. (record, 74, 77.)

The Federal question was duly raised by plaintiffs in error at every step taken in the procedure which finally resulted in the Supreme Court of Illinois, the highest court of the state, affirming the judgment entered against the plaintiffs in error, which court, in February, 1901, upheld the state statute, overruled the exceptions and objections of the plaintiffs in error, and affirmed the judgment of the court below, and the decision of the state court was in favor of the statute within the meaning of Section 709 of the United States Revised Statutes. Plaintiffs in error then sued out a writ of error, which was duly allowed in due form by the chief justice of the state, and thus the judgment was brought to this court for review. (record, 1, 18, 82, 90, 97, 105, 112, 116.)

In its opinion (189 Ill., 472, 482), the Illinois Supreme Court said:

> "We have held that the proper reading of the clause, 'or remainder to the collateral heir,' etc., should be read, '*and* remainder,' etc. (*Ayers* v. *Chicago Title and Trust Co.*, 187 Ill., 42,) and that the meaning of that provision is, that when the bequest is to the mother, father, husband, wife, brother and sister, widow of the son, or a lineal descendant, during the life or for a term of years, and remainder to the collateral heir of the decedent or to the stranger in blood, etc., such estate for a life or for a term of years shall not be subject to any tax, but that where the remainder is to lineals the prior estate would, under section 1, be subject to the tax.

But it is contended that this construction renders the statute unconstitutional, under both the State and the Federal constitutions; that it violates section 2 of article 2 of the constitution of this State, which provides that 'no person shall be deprived of life, liberty or property without due process of law,' and section 1 of article 9, because the law imposing the tax is not 'uniform as to the class upon which it operates,' and the first section of the fourteenth amendment to the Constitution of the United States, which provides 'that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' The constitutionality of the statute has been established by the decisions in several cases (*Kochersperger* v. *Drake,* 167 Ill., 122; *Ayers* v. *Chicago Title and Trust Co., supra; Magoun* v. *Illinois Trust and Savings Bank,* 170 U. S., 283), and we shall consider only the question whether, by the classification made, there was any arbitrary or unwarranted discrimination between life tenants by the statute imposing the tax." (record, 105.)

Assignment of Error.

1. That the statute is in contravention of the fourteenth amendment to the Constitution of the United States of America, in that the classification of life tenants is arbitrary and unreasonable, and denies to the plaintiffs in error, as life tenants, the equal protection of the laws; because the statute, as interpreted and enforced by the state courts, taxes life estates where the remainder is to lineals, but does not tax, and expressly exempts, similar life estates where the remainder is to collaterals or to strangers in blood.

I.

The Supreme Court of Illinois, in *Ayers* v *Chicago Title and Trust Co.,* 187 Ill., 42 (pp. 51-53), held

that a life tenant where the remainder was to the collateral heir of the decedent, or to the stranger in blood, was not taxable under this statute. This holding was reaffirmed in the Billings case when that case was before the court (record, 105). The ruling of the Supreme Court of Illinois, therefore, is to the effect that a life tenant, where the remainder is to lineals, is taxable under the act in question, but that a life tenant, where the remainder is to the collateral heir, or to the stranger in blood, is not taxable.

The question in the case at bar, therefore, is whether a state legislature may validly enact that of two life tenants succeeding to property at the same time, to the same extent, under the same circumstances and conditions, the one may be taxed on the right or privilege of succession, and the other be absolved from all taxes on the like right of succession, determined solely by the disposition of the remainder in which the life tenant has no interest or concern whatsoever.

The considerations which are to determine this inquiry are concisely stated by Mr. Justice McKenna, delivering the opinion of the court, in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S., 283, where the same act was under review:

> "Our inquiry must be not what will satisfy the provisions of the state constitutions, but what will satisfy the rule of the Federal Constitution. The power of the States over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws. * * *
>
> "Two principles, therefore, must be reconciled in the Illinois inheritance law if it is to be sustained,

> the equality of protection of the laws guaranteed by the Fourteenth Amendment, and the power of the State to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification—of one based upon 'some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection?' Legislation, special in character, is not forbidden by it, as we have seen. Treating mechanics as a class, and giving them a lien for the amount of their work, has been held reasonable. Charging a railroad corporation and not other corporations or persons with an attorney's fee has been held unreasonable, yet the former would seem to be as much an exclusive favor as the latter an exclusive burden."

In order to test the reasonableness of the Illinois Act, we may take illutrations suggested by its provisions.

Let us, for example, suppose the ancestor to provide by will that his estate should be equally divided between his sons A and B for life, severally; remainder as to A's moiety to the lineal descendants of testator, and remainder as to B's moiety to the living nephews and nieces of the testator. Under the Illinois law A is taxed and B is exempted. Both exercise, under the law of the State of Illinois, the same privilege, at the same time, in the same manner, and to the same extent, and one is taxed for exercising that privilege, whilst his brother is not taxed for exercising precisely the same privilege.

Or, an ancestor dying seized of a million of money might provide by will that his son A should receive $50,000 for life, with remainder to the lineal descendants of the testator; while to B he bequeaths $950,000 for life, with remainder to the living nephews and nieces of testator. Under this law A is taxed and B is not taxed. Both exercise the same privilege, so far as the privilege itself is concerned, which is that of

succeeding to property. The same right is exercised by both A and B. The state permits B to succeed to nearly twenty times as much as A without the imposition of a farthing of tax upon the exercise of the privilege, while A is taxed. The illustration may be extreme, but it is clearly within the possible operation of the law.

The plaintiffs in error do not question the power of the legislature to classify, where the distinctions made are based on some reasonable ground—some difference which bears a just and proper relation to the attempted classification,—but do contend that no legal system of classification can be devised which classifies or distinguishes the constituents of one class. Life tenants, as indicated in the act in question, are those persons holding a particular kind of freehold estates.

A life tenant when he succeeds to property, under a testamentary devise, does so irrespective of what may be the ultimate vesting of the remainder; he succeeds to precisely the same volume of estate, whether the remainder be limited to the lineal descendants or to the collateral heirs of the testator, or to the stranger in blood. In other words, the volume, the extent and the incidents of a life tenancy are wholly unaffected by the ultimate vesting of the remainder, whether that be in a lineal descendant of the testator, or in a collateral heir, or in a stranger to the blood. In the illustration first given, A's estate is no other than or different from B's. Each has a life estate with all the incidents the law attaches thereto, and no more and no less. At the termination of A's life, his interest and estate ceases. The same is true on the termination of B's life. Neither has any control whatever over the remainder, and neither had any option in the creation of either the life estate or of the vesting of the remainder. In succeeding to the property devised to them, both exercise a privilege conferred upon them, severally, by the State of

Illinois, at the same time, in the same manner, to the same extent and under like circumstances, and one is taxed for exercising the privilege and the other is not taxed for exercising the same privilege. As Judge Cooley forcibly said, in his Constitutional Limitations: "A statute would not be constitutional * * * which should select particular individuals from a class or locality, and subject them to peculiar rules, or impose upon them special obligations or burdens from which others in the same locality or class are exempt. * * * Everyone has the right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those who make the laws are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court, and the countryman at the plough."[1]

The right of succession, as long as it exists, as long as it is granted to anybody, must be recognized as a property right, of pecuniary value, and must be granted impartially and by general laws.

The privilege of succeeding to life estates is, of course, a valuable one, and a property right. When the state confers this privilege, it must do so in such manner that all persons in the same class shall be treated alike both in the privilege conferred and the burden imposed; and if the courts do not set aside and nullify all attempted

[1] Cooley's Const. Lim., 6th ed., 481, 483.

discrimination between constituents of a class, it is an invitation to, if not actual approval of, mere arbitrary selection.

True, the legislature may regulate the devolution of property, but when it so regulates it must treat the constituents of a class alike, and when it discriminates against constituents of a class it invades the constitutional right of the constituents thus discriminated against. "If the general assembly may grant to some citizens of a class substantial privileges," such as the right to inherit or take by testamentary devise without burden of any kind being imposed upon them, and may deprive other persons, under precisely the same conditions, of this right, except upon payment of a tax, "it is manifest that it may, upon like principle, deprive still other persons of other privileges which, under precisely the same circumstances, are enjoyed by all but the prohibited class." [1] To deny to one life tenant the right to acquire property—the right to succeed to property—except upon payment of a tax, and to extend to another life tenant at the same time, and to the same extent, and under substantially like circumstances, the right to acquire property —to succeed to property—is clearly a denial of the equal protection of the law. A person is deprived of liberty within the meaning of the Constitution when he is denied the right to acquire property in the manner which he has hitherto lawfully enjoyed, and which others are by the law still allowed to enjoy. To "succeed to property" is the equivalent of "to acquire property." To permit A to acquire property, free from the imposition of any tax, and to assess and tax B upon succeeding to the like property, at the same time, in the same manner and under substantially like circumstances, is a denial of the equal protection of the laws.

---

[1] Per Mr. Justice Scholfield in Frorer v. The People, 141 Ill., 180.

That the plaintiffs in error are, by the Illinois act, denied the equal protection of the laws, is surely manifest. So well understood now are the controlling principles of law that the citation of authority is almost of doubtful propriety.

> "The denial of the equal protection of the laws may occur in various ways. It will most often occur in the enforcement of laws imposing taxes. An individual is denied the equal protection of the laws if his property is subjected by the State to higher taxation than is imposed upon like property of other individuals in the same community."[1]

The whole question of the power of the state to discriminate against persons, or classes of persons, has recently been most thoroughly and satisfactorily discussed and decided by this court in what is known as the Illinois Anti-Trust Case.[2]

In that case, Mr. Justice Harlan, speaking for this court, said:

> "The vital question, however, is whether the statute of Illinois of 1893 is not inconsistent with the Constitution of the United States, by reason of the fact that by the ninth section it declares that 'the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.' The Circuit Court held this section to be repugnant to the Fourteenth Amendment of the Constitution of the United States, and to be so connected and interwoven with other sections that its invalidity affected the entire act, * * * We have said that the guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.'

---

[1] Per Mr. Justice Harlan, in dissenting opinion, Philadelphia Fire Ass'n v. New York, 119 U. S., 110.

[2] Connolly v. Union Sewer Pipe Company, 184 U. S., 540.

Missouri v. *Lewis,* 101 U. S. 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one that are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.' *Barbier* v. *Connolly,* 113 U. S. 27, 31. This language was cited with approval in *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In *Hayes* v. *Missouri,* 120 U. S. 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed.' 'Due process of law and the equal protection of the laws,' this court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' *Duncan* v. *Missouri,* 152 U. S. 377, 382. Many other cases in this court are to the like effect. * * *

The difficulty is not met by saying that, generally speaking, the State when enacting laws may, in its

discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf, Colorado and Santa Fe Railway* v. *Ellis,* 165 U. S. 150, 155, 159, 160, 165."

The principles deducible from the preceding and quoted cases are not in conflict with the opinion of this court in *Magoun* v. *Illinois Trust and Savings Bank,* but, on the contrary, may be said to be affirmed in that case. Indeed, it is there said (170 U. S., 293):

"What satisfies this equality (under the fourteenth amendment) has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all *the constituents of a class* so that the law shall operate equally and uniformly upon all persons in similar circumstances.' "

The fundamental requirement is that no person in a class shall be treated otherwise or differently than every other

person in the same class, under the like circumstances. This fundamental requirement will be violated if one life tenant where the remainder is to lineals may be taxed, whilst another life tenant where the remainder is to collaterals is absolutely free from all taxes. Life tenants, where the remainder is to lineals, are no different in any possible aspect that can be conceived of, from life tenants, where the remainder is to collaterals.

As was said by the Supreme Court of Missouri:

> "The legislature may legislate in regard to a class of persons, but they cannot take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and enact different rules for the government of each. This would be a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair, or their individual peculiarities, something not competent for the legislature to do." [1]

In the case at bar the unit is the life tenants. As already suggested, there is nothing in the statute which will warrant a classification of life tenants on the basis of the value of the property to which they severally succeed, and the question of the amount or value of the life estate succeeded to is wholly immaterial. Both life tenants exercise precisely the same privilege, at the same time, to the same extent, and in the same manner, and one is taxed for the privilege and the other is not taxed.

Any classification whereby it is sought to sustain the distinctions made by this act in respect to life tenants must concededly be based on some reasonable ground—some difference which bears a just and proper relation to the attempted classi-

[1] State v. Julow, 129 Mo., 163; 29 L. R. A., 257.

fication—and is not a mere arbitrary selection. Arbitrary selection can never be justified by calling it *classification.* As Hamilton said: "The genius of liberty reprobates every thing arbitrary or discretionary in taxation;"[1] and it is submitted that to attempt to differentiate between life tenants, as under this act, would be the exercise of uncontrolled discretion, wholly arbitrary, and resting upon no recognized principle of law or logic. Whether a life tenant within the degree of kinship filled by plaintiffs in error, under the act, succeeds to a greater or less sum or estate in value does not and cannot affect the nature of the privilege exercised, which is a privilege granted by the State of Illinois to all such life tenants to succeed to property, whether of great or small value. To whatever extent succeeded to, the privilege exercised is the same, and the tax upon the life tenant, where the remainder is to lineals, is upon, and exacted from, the *person* so exercising the privilege. The state makes no distinction in the privilege granted based on the value of the property succeeded to; and the privilege granted all life tenants is the same, regardless of the amount, or extent, or character of the property to which succession is had. When this privilege is granted to all such life tenants, however, the state is powerless to validly enact that one rule shall be applied to one life tenant and a wholly different and harshly discriminatory rule to another life tenant who succeeds to the same property in amount, at the same time, to the same extent and under like circumstances. To permit this to be done would be an invasion of the fundamental and essential rights of the citizen. While the power of the state to regulate the devolution of property is not

[1] The Continentalist; Hamilton's Works I, 240.

denied, this regulation must be within the limits marked by the Constitution. The constitution of the state limits the imposition of taxes upon the exercise of privileges so that they shall be uniform as to the class upon which the tax operates (article IX of the Illinois constitution); and this provision of the state constitution is a guaranty of equality, and is within the protection of the fourteenth amendment to the Federal Constitution, which secures, and is a pledge of, the protection of equal laws.

II.

Laws, arbitrary in their character, and bearing unjustly upon certain persons, have frequently been before this court, and the effort usually made is to sustain such legislation on some theory of classification; but the true rule is that each person subject to the laws has a right that he shall be governed by general public rules. Laws and regulations entirely arbitrary in their character, singling out particular persons, not distinct from others in the community by any reason applicable to such persons, are not of that character. Distinctions in rights and privileges must be based upon some distinction or reason not applicable to others, and it is only when such distinctions exist that differentiate, in important particulars, persons or classes of persons from the body of the people, that laws, having operation only on such particular person or persons, have been held to be valid enactments.

The power of the state to classify, as already stated, is not denied; but "the power of the state stops at injustice."[1] While the classification and the degree of taxation of the

[1] Southern Pacific Co. v. Board R. R. Comrs., 78 Fed., 236, 257.

selected subjects are within the legislative discretion, yet they are under the restraint of the supreme law of the land, which ordains that taxes shall be levied through equal laws, impartially administered. And the limits upon the power of classification by the states, as announced by this court, are that the classification must be based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not mere arbitrary selection. As said by Mr. Justice Matthews in *Kentucky R. R. Tax Cases,* 115 U. S. 321:

> "The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all *the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.*"

The language of Judge Swayne (*in re Grice,* 79 Fed., 627, 645) may well be quoted:

> "This subject of equality before the law is a fundamental principle of English and American liberty, which not only has been held sacred in all the latter-day constitutions, state and federal, but the principle has been guarded by the courts with jealous watchfulness, to see that the citizen may have guaranteed to him this inestimable privilege and condition."

And, after reviewing numerous decisions of the Supreme Court of the United States, Judge Swayne continues (p. 646):

> "This statute under discussion is clearly class legislation, discriminating against some and favoring others. It is not that character of legislation which, in carrying out a public purpose, is limited in its application, and, within the sphere of its operation, affects alike all persons similarly situated. It may affect, and does affect, individuals of the same class in an opposite way. It favors some individuals of a certain class, and denounces other individuals of the same class. * * *

> All property in the state is entitled to equal protection, and no special property is entitled, or ought to receive, any special favors. Discrimination may be as potent against the citizen, in the direction of his property, as if aimed directly against himself personally."

And Judge Cooley says (*Taxation*, 215):

> "It is difficult to conceive of a reasonable exemption law which should select single individuals or corporations, or single articles of property, and taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation."

In *State* v. *Loomis* (115 Mo., 304, 314; 22 S. W. Rep., 350) the Supreme Court of Missouri, speaking through Mr. Justice Black, said:

> "Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations."

The Supreme Court of Illinois, apparently not denying the general rule of law in respect to classification, as indicated by the preceding authorities, seeks to escape its effect by the following argument:

> "It is said that the statute discriminates between life tenants with remainder to lineal descendants and life tenants with remainder to collateral heirs, by imposing the tax on the first and excluding the second from its operation. But we cannot see that this is a mere arbitrary exaction from one class while another class, which cannot be differentiated from it, is allowed to go untaxed. A life estate with the fee descending in the lineal line might well be more desirable than a life estate with remainder to collateral heirs or

> strangers in the blood. At any rate, there is a sufficient difference upon which the legislature could, without transcending its power, base a classification." (record, 105, 106.)

Life tenants under the Illinois statute constitute but a single class, and whether the life tenancy succeeded to supports a remainder in the lineal line, or supports a remainder to the collateral heir, or to the stranger in blood, the life tenancy enjoyed, and the privilege exercised by the tenant in succeeding to it, are one and the same. The estate succeeded to, and the privilege exercised, in both cases, are identical. Again: the court apparently seeks to make a classification based upon some theory of monetary value, or of other *desirable* quality, but this argument cannot stand, because we have already demonstrated that it is possible, under this act, for a life tenant to succeed to an estate more desirable from every human standpoint without the imposition of any tax whatever, all that is necessary being that the remainder shall be limited to a collateral heir, or the stranger in blood. As has been suggested, the tax is not imposed upon the property, but upon the person who succeeds to the property. Indeed, the whole theory of inheritance taxes is sustained upon the principle that the tax is upon the person who succeeds; and it will probably be conceded that if the tax were put upon the property the Illinois law could never be sustained. (170 U. S., 302.)

Again, the Supreme Court of Illinois is clearly in error, when it says (p. 483 of opinion):

> "It may be observed that as to the rate of tax to be imposed and the amount of the exemption the beneficiaries are divided by the first section into three classes, which, for purposes of designation, may be called,—first, the lineals; second, the collaterals; and third, the strangers to the blood. It is not questioned

> in this case that these differences in relationship to the decedent have been properly used by the legislature as a just and legal basis for purposes of classification. * * * Now, to exempt, by the second section, beneficiaries of the first class who are given only a life estate with remainder over to beneficiaries of the second or third class, is to apply the same principle of discrimination in favor of those standing nearest in relationship to the deceased owner. No life tenant falling within the second or third class is exempt, and the mere fact that life tenants of the first class, where the remainder is kept in the lineal line, are not included in the exemption does not render the statute unconstitutional for lack of uniformity as to the class upon which it operates, as supposed by counsel." (record, 106.)

But how does this so-called lawful discrimination operate in the case of two beneficiaries, standing in precisely the same relation to the deceased owner, who severally succeed to life estates at the same time, to the same extent, and under the like circumstances; one being taxed where the remainder, by act of the deceased owner, is to go to the lineal descendants of the testator, and the other not taxed, where, by act of the same deceased owner, the remainder is to go to the collateral heir, or to the stranger in blood? In the instance given, is there not arbitrary and unreasonable discrimination against the tenant who succeeds to the life interest that supports a remainder to lineals?

If it shall be argued that legislatures have the power to classify for purposes of legislation, without infringing upon constitutional limitations, as held by this court in the *Magoun* case, the answer is: Yes, but such classification "must be so general as to bring within its limit all those who are in substantially the same situation or circumstances." [1]

---

[1] Lippman v. People, 175 Ill., 101.

Here, the attempted classification, which embraces life tenants with remainder to lineals, is not "so general" as to include life tenants with remainder to collaterals, and they are both "in substantially the same situation and circumstances." The life estate of the one is precisely the same as that of the other; *i. e.,* the disposing of the remainder, whether to collateral or lineal, does not and cannot, in the slightest degree, affect the use or value of the life estate to the life tenant.

If it shall be argued, as intimated by the Supreme Court of Illinois in its decision of this case, that there is perhaps an element of value or desirability to the life tenant in having the remainder go to a lineal descendant of the testator, the answer is, it cannot by any possibility affect the value of the *res* to which the life tenant succeeds, viz., the estate for life, which is the same in either event of the provision for remainder,—and it is this estate for life only the succession to which is taxed. Even this supposed element of sentimental value disappears when the life estate goes to the widow of a son, with remainder to lineal descendants of the testator, under the provisions of the act.

Illinois statutes, involving the denial of the equal protection of the laws, and the taking of property without due process of law, and "the law of the land," have come before the Supreme Court of that state. Such a case was *Ritchie* v. *People,* 155 Ill., 98, commonly known as the "Factory or Workshop Act," prohibiting the employment of females in factories or workshops more than forty-eight hours in any one week of six days. The act was held to be unconstitutional, as being partial and discriminating in its character, and as being an arbitrary restraint upon the fundamental right of the citizen to control his or her own

time and faculties; and in disposing of the case, the court said:

> "The 'law of the land' is the opposite of 'arbitrary, unequal and partial legislation.' * * * The legislature has no right to deprive one class of persons of privileges allowed to other persons under the same conditions. The MAN, WHO IS FORBIDDEN TO ACQUIRE AND ENJOY PROPERTY IN THE SAME MANNER IN WHICH THE REST OF THE COMMUNITY IS PERMITTED TO ACQUIRE AND ENJOY IT, IS DEPRIVED OF LIBERTY IN PARTICULARS OF PRIMARY IMPORTANCE TO HIS PURSUIT OF HAPPINESS."

Another case was *Frorer* v. *People,* 141 Ill., 171, commonly known as the Truck Store Act, which was held to be unconstitutional. In that case Mr. Justice Scholfield, announcing the opinion of the court, said (p. 181):

> "Our constitution guarantees that no person shall be deprived of life, liberty or property without due process of law. * * * And, says Cooley: 'The man or the class forbidden the acquisition or enjoyment of property in the manner permitted the community at large, would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness' (citing authorities). 'Due process of law' does not mean a statute passed for the purpose of working the wrong. Cooley's Const. Lim. (1st ed.), 253. These words are held to be synonymous with the words 'law of the land' (*Ibid.,* 352, 353). 'And this means general public law, binding upon all the members of the community under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals.' *Millett* v. *People,* 117 Ill., 294, and authorities cited. It is not doubted that laws may be enacted, properly, and without infringing this section of the constitution, which, by reason of peculiar circumstances, may affect some persons or classes of persons only, who were not before affected by such restrictions; but in such instances the circumstances must be so exceptional as to leave no others affected in

precisely the same way upon whom a general law could have effect. As we quoted from Cooley's Constitutional Limitations in *Millett* v. *People, supra:* 'Distinctions in these respects should be based upon some reason which renders them important, like the want of capacity in infants and insane persons; but if the legislature should undertake to provide that persons following some specific lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bound of legislative power, even if it did not come in conflict with express constitutional provisions. The man or the class forbidden the *acquisition* or enjoyment of *property* in the manner permitted to the community at large, would be deprived of *liberty* in particulars of primary importance to his or their pursuit of happiness.' Cooley's Const. Lim. (1st ed.), 391."

Another case was that of *Lippman* v. *People,* 175 Ill., 101, in which was involved what was commonly known as the "Trade Mark Statute," in which the Supreme Court of Illinois said:

"While, perhaps, no precise and comprehensive definition of the word 'privilege,' as used in constitutions, has been attempted, the right to employ remedies for the collection of debts, the recovery of property and the *enforcement of rights* has always been included in the term as used in the Federal constitution. It seems that the peculiar benefits, advantages and rights conferred by this act upon the persons named in it, and the right to employ an unusual remedy for the recovery of their property, must be classed as privileges, and this does not seem to be denied in the argument. It is argued, however, that the law conferring these privileges is not a special but a general one, because it applies to all persons similarly situated. General laws have been defined to be those which relate to or bind all within the jurisdiction of the law-making power, while a

special law is limited to the object to which it applies. * * * If the law is general and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides. * * * Although general in its character, a law may, from the nature of the case, extend only to particular classes, such as minors, married women, laborers, bankers or common carriers. Such a law is not obnoxious to the provisions of the constitution if all persons of the class are treated alike under similar circumstances and conditions. * * * If an act should attempt to confer privileges only on persons of a certain stature, it could be said to apply uniformly to all people answering such description, and yet it would be absurd to say that such a law would be a general one. THE CLASSIFICATION MUST BE SO GENERAL AS TO BRING WITHIN ITS LIMITS ALL THOSE WHO ARE IN SUBSTANTIALLY THE SAME SITUATION OR CIRCUMSTANCES."

The constitutional guaranties afforded by both the state and federal governments, the son and the grandson of Albert M. Billings now invoke. The pledge of the protection of equal laws will be violated if they are taxed under this act of the general assembly of Illinois. To tax them, life tenants, with remainder to lineals, and to absolve life tenants where the remainder is to collaterals, is mere selection, that cannot be justified, and that does violence to both the letter and the spirit of the guaranties contained in both the state and the national constitutions.

The act in question is essentially a tax law upon persons for exercising a privilege, and if one person is to be taxed for exercising a privilege, and his brother under the same circumstances and conditions is not taxed upon exercising the same privilege, it is manifest the act not only offends against the fundamental principles of taxation, but the fundamental rights of the citizen. And if it does so, it is the

duty of the court to protect and defend the citizen by declaring the act unconstitutional.

> "In the exercise of the power to tax, the purpose always is that a common burden shall be sustained by common contributions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality. The power is not, therefore, arbitrary, but rests on fixed principles of justice which have for their object the protection of the taxpayer against exceptional and invidious exactions, and is to have effect through established rules, operating impartially."[1]

While it is true the case of *Magoun* v. *Illinois Trust and Savings Bank* raised the question of the constitutionality of the Illinois Inheritance Tax Act, and this court held that the classification for the purposes of taxation made by the Illinois legislature (and which was the question presented to this court) did not conflict with the provisions of the Federal Constitution, nevertheless, the question involved in the case at bar was not presented to and was not passed upon by this court. It related solely to the graduated feature of the tax. The gravamen of the decision in the Magoun case may be said to be this: that "if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, 'the law operates equally and uniformly upon all persons in similar circumstances'" (p. 286 of opinion). And the court held the classification presented by the Magoun case was not obnoxious to the fourteenth amendment.

The question presented by the record in the case at bar is whether or not the Illinois legislature can discriminate against *constituents of a certain class,* and apply different rules for the taxation of its members.

---

[1] Cooley, Taxation, 2.

Life tenants constitute but a single class, and the incidents of such an estate, the source thereof, the extent, the dominion over and quality of interest in the tenant, are the same irrespective of the ultimate vesting of the remainder. The tax is not upon the property, but is upon the person succeeding to the property.

Conclusion.

The Illinois act to tax gifts, legacies and inheritances should be declared unconstitutional, in so far as it purports to tax life tenants whose estates support a remainder to the lineal descendants of the testator, and to absolve from taxation life tenants whose estates support a remainder to collaterals or to the stranger in blood, because such an act is a denial of the equal protection of the laws to the life tenant discriminated against, and as such it is obnoxious to the fourteenth article of amendment to the Constitution of the United States.

James F. Meagher,
William D. Guthrie,
Of Counsel for Plaintiffs in Error.

APPENDIX.

Provisions of Illinois Constitution.

"No person shall be deprived of life, liberty or property, without due process of law."

Const. of Illinois, Art. II, Sec. 2.

"The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Const. of Illinois, Art IX, Sec. 1.

Illinois Inheritance Tax Act.

"An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same.

Approved June 15, 1895. In force July 1, 1895.

§ 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* All property, real, personal and mixed which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this state or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporation shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount, pro-

vided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: *Provided,* that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

§ 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or (and) remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this Act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same

is paid: *Provided,* that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the People of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county: *Provided, further,* that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years.

§ 3. All taxes imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes is not paid: *Provided,* that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the from and to the effect prescribed in section two of this Act for the payment of said tax, together with interest.

§ 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and

whenever any such legacy shall be charged upon or payable out of the real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

§ 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

§ 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlements of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

§ 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

§ 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritant tax has been deducted in compliance with this Act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

§ 9. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of decedent, or in trust for a decedent, which shall be liable to the said tax, said tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation forming such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable to such taxes.

§ 10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him, on satisfactory proof rendered to him by said county treasurer of said erroneous payments, to refund and pay to the executor, administrator or trustee, person or persons, who have paid any such tax in error, the amount of such tax so paid: *Provided,* that all applications for the repayment of said tax shall be made within two years from the date of said payment.

§ 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on the application of any

interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever, occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpœnas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matter as said county judge may by order require to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith use and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment, on paying *the given security proof* (or giving proper security) to the county judge to pay all costs, together with whatever taxes that shall be fixed by said court. The appraisers shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

§ 12. Any appraiser appointed by this Act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said

tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days, and in addition thereto the county judge shall dismiss him from such service.

§ 13. The county court in the county in which the real property is situated, of the decedent who was not a resident of the State, or in the county in which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this Act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

§ 14. If it shall appear to the county court that any tax accruing under this Act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this State and the fees and costs in such cases shall be the same as in the probate cases in the county courts of this State.

§ 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this Act, after refusal or neglect of the person interested in the property liable to pay said tax, to pay the same, he shall notify the State's attorney of the proper county, in writing, of such refusal to pay said tax, and the State's attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 14 of this Act, for the enforcement and collection of such tax, and in such

case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

§ 16. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which, or the party from whom, he has reason to believe a tax under this Act is due and unpaid.

§ 17. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons, and taking the proceedings specified in section 14 of this Act, the State Treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

§ 18. The Treasurer of the State shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payment thereof filed with him, which books shall be kept in the office of the county judge as a public record.

§ 19. The treasurer of each county shall collect and pay the State Treasurer all taxes that may be due and payable under this Act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the Auditor of Public Accounts on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the Auditor may prescribe, and for all said taxes collected by him and not paid to the State Treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent. per annum.

§ 20. The treasurer of each county shall be allowed to retain two per cent. on all taxes paid and accounted for by him under this Act, in full for his services in collecting and paying the same, in addition to his salary or fees allowed by law.

§ 21. Any person or body politic or corporate shall upon the payment of the sum of fifty cents, be en-

titled to a receipt from the county treasurer of any county or the copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

§ 22. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided,* that said lien shall be limited to the property chargeable therewith: *And, provided, further,* that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate.

§ 23. All laws or parts of laws inconsistent herewith be, and the same are hereby, repealed."

Laws of Illinois, 1895, p. 301.